

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Daniel Rynne

v.

Civil No. 08-cv-283-JL

Richard Gerry, Warden,
New Hampshire State Prison

O R D E R

Before the Court is Daniel Rynne's petition for a writ of habeas corpus (document no. 1), filed pursuant to 28 U.S.C. § 2254. The matter initially came before me for preliminary review to determine whether the petition was facially valid. See Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts; United States District Court District of New Hampshire Local Rule 4.3(d)(2) (authorizing magistrate judge to preliminarily review pro se filings by prisoners).

On October 21, 2008, I issued an Order directing that this matter be stayed while Rynne returned to the state courts to exhaust his two then-unexhausted claims. In that order, I also found that Rynne had exhausted the claims that were the subject

of his direct appeal¹ and the claim that was the subject of his first motion for a new trial².

Rynne now seeks to have the stay in this matter lifted (document no. 7). Rynne has filed documentation demonstrating proper exhaustion of his remaining claims, presented to the state courts in a second motion for a new trial³. Accordingly, I find that the petition is facially valid and may proceed. See 28 U.S.C. § 2254(a) and (b) (providing that the writ "shall not be granted" unless petitioner is in state custody and has exhausted all available or effective state remedies). The motion to lift the stay in this matter (document no. 7) is therefore GRANTED.

I further direct that the petition be served upon, and answered by, respondent. See § 2254 Rule 4. The respondent shall file an answer or other pleading in response to the allegations made therein. See id. (requiring reviewing judge to order a response to the petition). The Clerk's office is directed to serve the New Hampshire Office of the Attorney

¹These claims are numbered "1-A," "1-B," and "1-C" in my October 21 Order.

²This claim is numbered "2" in my October 21 Order.

³These claims are numbered "3" and "4" in my October 21 Order.

General as provided in the Agreement On Acceptance Of Service, copies of this Order and the habeas petition (document no. 1), my October 21, 2008 Order (document no. 3), Rynne's January 30, 2009 and April 28, 2009 status reports and attachments thereto (document nos. 5 and 6), Rynne's motion to lift stay (document no. 7), and the further addenda to the petition (document no. 9) filed in response to my May 4, 2009 Order.

Respondent shall answer or otherwise plead within thirty (30) days of the date of this Order. The answer shall comply with the requirements of § 2254 Rule 5 (setting forth contents of the answer).

Upon receipt of the response, the Court will determine whether a hearing is warranted. See § 2254 Rule 8 (providing circumstances under which a hearing is appropriate).

Petitioner is referred to Fed. R. Civ. P. 5, which requires that every pleading, written motion, notice, and similar paper,

after the petition, shall be served on all parties. Such service is to be made by mailing the material to the parties' attorneys.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: June 24, 2009

cc: Daniel Rynne, pro se